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ART. III.—1. *The London Quarterly Review for January 1834. Article VII. on Free Trade to China.*

2. *The Chinese Repository for January 1834. Printed at Canton.*

IN the last number of this journal, we took occasion to correct a misrepresentation, contained in the hundredth number of the *London Quarterly Review*, on the subject of the execution of an Italian sailor at Canton. At the time we made the correction, we spoke only, (as we stated), from general information, on the strength of which we felt authorized to deny the accuracy of the British statement. After our article was printed off, and while our number was passing through the press, the *Chinese Repository for January last* fell into our hands. We there found a brief but circumstantial narrative of the fate of the Italian, Francisco Terranova, which formed the subject of the injurious statement in question. This narrative fully bore us out in the contradiction we had given to the British writer, and we accordingly introduced it into a note at the end of our number. While the last pages of the number containing this note were in the process of correction, we received, through the kind intervention of a friend in Baltimore, an authentic account of the trial of Terranova. It reached us too late for publication at that time, and was consequently reserved for a place in the present number. Affording, as it does, an ample refutation of the injurious suggestion in the *British Quarterly Review*, and throwing some light on the jurisprudence and manners of the Chinese, we shall lay it before our readers, as it was drawn up at the time in Canton. To make the matter more intelligible, we quote the passage in question from the *Quarterly Review*:—

‘From the moment, that our violation of Chinese law is of such a nature, as to drive the Chinese government to the extreme measure of *seizing* the persons of the offending parties, the die is cast, and we fear that hostilities will be inevitable. The last instance of the kind that occurred was in 1784, when one of the supercargoes of a private ship was seized, to answer for a homicide; and, subsequently, after a great deal of blustering and preparations for commencing hostilities, was redeemed, by the surrender of another individual equally innocent, although of an humbler station. Much as we regret the probability of a rupture with the Chinese, we fervently hope that we may never see it averted, by

such another disgraceful compromise, which has only for its parallel, one made by the Americans, a very few years ago, when an innocent Italian was given up to be strangled, to save the life (*it has never been denied*) of a guilty American.'

Now, if instead of the words in Italics, our worthy brother of the London Quarterly Review had said, *it has never been asserted*, that proposition would probably have been nearer the truth, although it would have made nonsense of his remark. That remark is every way exceptionable. By the expression *guilty American*, it implies that a murder had been committed by some one, which does not appear to have been the case; and the charge of substituting an innocent person, and him a foreigner, for a guilty American, if wantonly made, is of a character highly offensive and discreditable. The matter is made worse by the form of the insinuation. The charge it seems has never been *denied*. This implies that it has been admitted; or at best that having been frequently, publicly, formally made, no man has been found to gainsay it. Now we, of course, cannot say, that the charge never was made before. But we can ask when it was made; by whom it was made; and what opportunity has there ever been afforded either for admission or denial?

It is well known to our readers, that by the Chinese laws, which like those of the Medes and Persians, are unchangeable, homicide can only be expiated by the blood of its author. We suppose it will not be necessary for us to enter any *caveat* against being thought to approve the Chinese jurisprudence. Another maxim, not of Chinese law, but of that more respectable code, *the law of nations*, is, that a foreigner voluntarily entering into the jurisdiction of a country, is amenable to the laws of that country.

Sometime in the month of September, 1821, while the ship Emily of Baltimore, Captain Cowpland, was lying at Canton, a Chinese woman, named *Ko-leang-she*, was killed by a jar, thrown from the ship by one of the crew, Francisco Terranova. The circumstances of the case were never fully made out. Whether it was purely accidental, or the consequence of a quarrel which arose between Terranova and the woman in their traffic for ardent spirits, as is suggested in the Canton Repository, was at the time uncertain. Of the incidents previous to the trial, we have no detailed account. But it appears that a charge of murder was immediately brought against Terranova, by the Chinese authorities, and his surrender demanded. This

was refused by the captain of the *Emily*, who however immediately put him in close confinement, on board his ship. A negotiation followed, between the Chinese magistrates and the Americans, the result of which was that both parties agreed, that Terranova should have a trial, on board the *Emily*, at which both American and Chinese witnesses should be heard. We again enter our protest, against being understood as attempting to palliate the conduct of the Chinese, in this affair; but we would only observe, that if a Chinese sailor, from on board a Chinese vessel in the Thames, (supposing it possible a Chinese vessel should get there), had gone on shore at night, and stolen a sheep, he would, unless the law has been lately changed, in Great Britain, have been arrested the next day, for a capital offence. Had his voluntary delivery been withheld, he would have been taken by force. Had that force been resisted by the Chinese captain and his crew, they would have been deemed partakers of the crime, and treated accordingly.* And had the said Chinese been found guilty of stealing the sheep, although capital punishment might not have been inflicted, the culprit would have had an opportunity afforded him, for the next fourteen years, not to say for the residue of his life, of musing on the maxims of Confucius, on the subject of private property, in the contemplative solitudes of Van Diemens's land or New Holland. If the sovereign of the celestial empire had thought of remonstrating against this usage of his wandering subject, the remonstrance would have been considered a proof, that his majesty was, as might be expected of a Mantchoo Tartar, no better than a barbarian; and if the Quan-tung Quarterly Reviewers, (supposing these benighted disciples of Fohi to have such a civilized thing as a Quarterly Review), had undertaken to formalize upon the matter, they would have been ridiculed for their pains, wherever the English language is spoken. But to return to the case in hand. The account of the trial, as drawn up at Canton at the time, is as follows.

On the fifth of October 1821, the committee of the American gentlemen at Canton, to whom Captain Cowpland, of the ship *Emily*, had applied for advice and direction, for the government of his conduct, relative to the trial of Francis Terranova, received a communication from the committee of the Hong merchants of the following purport, viz.—that the Vice-

* 4 Blackstone, 129.

roy of this province had issued orders to the *Pon-ue*, to repair on board that ship, the next morning, and there proceed to try the said man for the crime of which he was accused; the Chinese having acceded to the propositions previously made, that he should have a fair and impartial trial, and that both American and Chinese witnesses should be examined; at the same time refusing to grant permission to the Reverend Robert Morrison, to attend as interpreter, on the ground of his being attached to the British factory, and their determination not to allow the interference of those attached or belonging to any other nation. These things having been communicated to Captain Cowpland, who was then at Whampoa with his ship, the majority of the committee, as there was not time to receive his answer, before it was necessary to be on board, proceeded directly to Whampoa, and early the next morning, Saturday Oct. 6, assembled on board the *Emily*, previously to the arrival of the *Pon-ue*. They found that the vessel had been prepared in the most suitable manner, for the business in hand. Arms of every kind had been removed, and the crew of the vessel, (with the exception of the prisoner, who was confined in a state-room, guarded by two American Officers), were stationed on the fore-castle, which they did not leave during the day. Eight Hong merchants attended at the trial.

About eight o'clock in the morning, as the *Pon-ue's* boat, attended by a number of Chinese man-of-war's boats approached the ship, Captain Cowpland, with the linguist Couqua, joined him, and came alongside in the boat with him. Captain Cowpland immediately went on board his vessel, and was required by the Hong merchants there assembled, to take the prisoner, and go with him on board the *Pon-ue's* boat, that the *Pon-ue*, agreeably to the Chinese criminal practice, might look him in the face. Captain Cowpland hesitated to comply with this demand, regarding it as substantially a surrender of the prisoner, without the stipulated trial. Houqua, however, pledged himself, that, as soon as the ceremony had been performed, Terranova should be returned on board the ship, and no further opposition to this demand was made. Houqua then required that the prisoner should be hand-cuffed, which was promptly refused. Captain Cowpland having pledged himself for the safe-keeping of the prisoner, till after his trial, and the Chinese having agreed to leave Terranova in his custody, he refused to put him in irons, on the ground that no

prisoner is thus confined in America, during the progress of his trial. As they had chosen to try the accused on board an American ship, they must permit him to be treated as an American prisoner, till the conditions acceded to by them had been complied with ; that is, till he had had a fair and impartial trial. Should he be found guilty, they would then have a right to secure him, as they pleased. On this explanation, the demand was waved, Terranova himself having promised to demean himself peaceably. Captain Cowpland accompanied the prisoner into the *Pon-ue's* boat, still lying alongside, and after remaining there a short time, they were sent back by the *Pon-ue*, to the *Emily*.

In a few moments, a number of Chinese officers of the suite of the *Pon-ue*, came aboard, bearing the insignia of that magistrate. They were received by the eight Hong merchants, who had already been on board more than an hour, viz. Hou-quua, Mou-quua, Chon-quua, Pac-quua, Keng-quua, Con-se-quua, Gou-quua, and Poon-quua. The *Pon-ue* himself soon came on board, bringing with him all the witnesses on the part of the government, and a considerable retinue. As soon as he was seated, the linguist made out and handed to him a list of the names of the committee, noting those who had not yet arrived. This committee consisted of twelve or fifteen of the most respectable American merchants at Canton.

Pac-quua, the security merchant of the *Emily*, and Cou-quua the linguist, being called, fell on their hands and knees, to hear the demands of the *Pon-ue*, of which the Americans could get no interpretation. Captain Cowpland was next called. The question asked him, whether Pac-quua was his security merchant, and Cou-quua his linguist, being answered in the affirmative, he was required to bring forward the prisoner. This was done. Terranova approached the table, at which the *Pon-ue* sat, the fatal jar with which he is accused of having struck the woman, and is supposed to have caused her death, was placed before him, on the deck, together with the hat she wore at the time. He was questioned whether he knew the jar, whether it belonged to him, or to the ship. He replied with perfect composure and firmness, that it was the same jar which he had handed the woman, at the time that he gave her a mace, to pay for the fruit she was to put into it ; showing by signs, the manner in which he had handed it into the boat. The *Pon-ue* showed much irritation

at any attempt at explanation, and Hou-quá and the linguist, although repeatedly urged by those assisting the prisoner, evidently did not translate the half of what was urged in his defence. Whenever either of them attempted an explanation, he was silenced by the *Pon-ue*. Without hearing what the prisoner wished to state in his defence, the *Pon-ue* called the government witnesses, stating that all he now wished of Terranova was to identify him, — to have him acknowledge himself the seaman, who was trading with the woman, and that the jar was the same which he had used. The *Pon-ue* urged much the same considerations, as far as could be gathered from the limited abilities of the linguist and Hou-quá as interpreter, as he had urged on the inquest; and it was conclusive to every unprejudiced mind, that he had prejudged the case, and had only come on board to receive his victim.

Although these appearances tended greatly to discourage the hope of an impartial trial, the Americans present could not in silence submit to this breach of faith, on the part of the Mandarins, after having themselves complied with all that had been required of them, and they insisted on having their witnesses examined. The Chinese witnesses having been called, the American withdrew, (such being the usage on a Chinese trial,) but not without the assurance, and in the full expectation, that their request should be granted. The only witnesses produced on the part of the Government, were the husband of *Ko-leang-she*, the woman belonging to the Hoppo boat attached to the Emily, and two children, apparently between the ages of seven and twelve years. These witnesses approached the *Pon-ue*'s table, on their hands and knees, never raising their eyes. When the woman was required to look up, and point out which was the man, although there was no other seaman near, the linguist was obliged to put his finger on Terranova, to enable her to say, *he is the man*. She gave a very long account of the affair, in which she was constantly prompted by the oldest child. This circumstance was objected to, on behalf of the prisoner, and the linguist was desired to make known the objection to the *Pon-ue*, but he refused to do so. The linguist then commenced a translation into English of the woman's evidence. It was urged, that as she was well known to speak better English, than either the linguist or Hou-quá, she ought to be allowed to repeat her own evidence in English, for the benefit of the Americans, in order, that if it differed from the Chinese version, the falsity

might be exposed. This was refused, and on her commencing a few words in English, she was stopped. The Americans were accordingly obliged to submit to the garbled translation made by the linguist. As soon as it was heard, they called on Hou-quá, in the most solemn manner, to attend to and faithfully interpret, what they had to bring forward as testimony, in reply to this first and most material witness, which they assured him would be sufficient, in any court of justice in America, to set aside her evidence. She had just stated, that, from the Hoppo boat attached to the Emily, she had seen the jar thrown. She saw it strike the head of *Ko-leang-she*; saw her fall into the water; saw that she rose no more; and knows that this is the very man who threw the jar. It was proved, in contradiction to this evidence, that from the position of the two boats at the time, it was impossible for her to have seen what passed, the ship being between the two boats; that on the afternoon of the day on which the event happened, and again the next morning, she had stated to Captain Cowpland, in the presence of four other American Captains, (who took it down in writing and signed it, and the paper was forthcoming,) that she knew nothing of the affair; that she was inside her own boat, and that her attention was occupied in looking out, to see what was the matter with a child, which she heard crying in a Sanpan (boat), that was then floating past the stern of the Emily, and near it a woman's hat in the water. Soon after the husband of the woman, (who had been in the Sanpan) came round the bow of a country ship, which was near, and took the hat out of the water. It was then perfectly whole. He then took up the jar out of the boat, which was also perfectly whole, and beat the hat forcibly with the jar. All this Hou-quá was required, as he valued the truth, faithfully to interpret to the *Pon-ue*, and it was believed, that, as far as his ability extended, he did so. The instrument of torture was then called for by the *Pon-ue*, and thrown down before the woman, but it was not applied. She persisted in her present story; and the only satisfaction given the prisoner's friends was, that now she told the truth, whereas before, she told what was not true. One of the children gave some evidence, which was not interpreted. It was urged, on behalf of the prisoner, that neither of the children had witnessed the affair; but they were afterwards brought from the shore, by the husband of the deceased, and that he came from the side of the country ship, opposite to the Emily, and con-

sequently could not himself have witnessed the accident. All this the Americans could prove by the government witnesses.

The *Pon-ue* had, for some time, evinced a desire to close the trial with this evidence, and not to hear any thing brought to controvert it. At this moment, with passion in his countenance and violence of language, he declared that all this was of no avail ; — that he had seen for himself the hole in the hat and in the head of the woman ; that he had applied the bottom of the jar and found that it fitted the fracture ; — that the jar belonged to the man or the ship ; — and that this was all that was necessary, and that the prisoner must be given up. With this he rose to depart. It was strenuously urged to the linguist and to Hou-qua, that the conditions of the trial had not been complied with ; they had pledged themselves we should be heard ; there were many ways, in which the woman might have come to her death ; she might have fallen in the boat on some pointed instrument, on the iron pin upon the stern, on a nail standing up, on the side of the boat, or what was more generally believed, her husband, finding the body, might have himself inflicted the wound, for the purpose of extorting money from the ship. On such evidence, it was urged, the man cannot be given up to suffer the penalty of your laws. Our laws regard every man as innocent, till he is proved to be guilty. We have searched for the truth ; — we are not satisfied. If he is guilty, prove him so and he shall be delivered, at your own city gates. We have one witness, who saw the jar handed into the boat by the prisoner. He also saw the woman fall out of the boat, at a considerable distance from the ship. Hear his testimony. If you will hear no more than what your witnesses have stated, we are not satisfied. We are under your laws ; execute those laws. We do not resist you ; find the man guilty by a fair and impartial trial, (which you have promised,) and he will be delivered up to you. If he is not proved so, and you persist in not hearing the evidence, you must take him out of the ship. We will leave her ; no resistance ought or will be made to you. His blood be on your heads.

At length, the *Pon-ue* perceiving the earnestness of the Americans, was induced again to take his seat. He sat a few moments, and the witness alluded to was produced. The *Pon-ue* heard but a few words of the testimony, — silenced the linguist, and rising from his chair, said it was heaven's bu-

siness ; if he had judged wrong, God would punish him for it hereafter ; he knew, in his own heart, the man was guilty ; he *must* be delivered up. With this he left the deck of the *Emily*, and went on board his own boat alongside, with most of his retinue, leaving the Hong merchants and linguist to see that he was obeyed.

During this mockery of justice, there were on board the *Emily* more than one thousand Chinese. The ship was surrounded by man-of-war boats. The Americans on board did not exceed forty persons ; and the boats of the other American vessels were purposely ordered away. Every thing, that could be construed into an offensive weapon, had been carefully removed, to show that we considered ourselves completely in their power, and as a respectful compliment to the Chinese authorities, the colors were flying.

Hou-quá, as the oldest of the Hong merchants, now acted as spokesman, and required in the *Pon-ue's* name, that we should deliver up the prisoner. The same reply was made by us as before ; come and take him. You have the power and you have armed men to exercise it. He again asked, if there would be any resistance, and the most solemn assurance was given, that there should be none. Hou-quá, on this, turned to go to the *Pon-ue's* boat, as was supposed to obtain a guard of soldiers to take Terranova. It was, however, stated to him, that he must understand and must inform the *Pon-ue*, that the Americans did not consider him as complying with his engagements. He had promised a fair and an impartial trial. It had not been allowed us. We consider the case prejudged. We are bound to submit to your laws while we are in your waters, be they ever so unjust. We will not resist them. You have, following your ideas of justice, condemned the man unheard. But the flag of our country has never been disgraced. It now waves over you. It is no disgrace to submit to your power, surrounded as we are by an overwhelming force, backed by that of a great empire. You have the power to compel us. We believe the man innocent ; when he is taken from the ship we leave her ; and the commander strikes his colors.

Hou-quá considered these last suggestions of so much importance, that he, together with several of the other Hong merchants, went down into the *Pon-ue's* boat, to communicate their substance to him. Before he could return, the linguist

was put in chains on the *Emily's* deck. The Hong merchants, having returned, required that Captain Cowpland should take the man to Canton, for a further trial, or put him in Pac-quas's hong, till another and higher mandarin should be ordered to adjudge the case. This was refused by the Americans, on the ground that the Chinese had had their option to try the man at Canton or on board the *Emily*. They had chosen the latter, and there we now required, that the trial should be closed. This being communicated to the *Pon-ue*, he was heard high in words with Hou-quas, who returned to the ship, with the same demand, which he had just made, and to which the same answer was returned. We gave as our *ultimatum*, that they should come on board, on their own responsibility and take out the prisoner, and that the ship's colors should be struck. To this we steadily adhered.

This conference lasted several hours. The Chinese persisted in refusing to take the man, and the Americans refusing voluntarily to surrender him. At length the *Pon-ue's* patience being exhausted, he having sat in his boat more than three hours, he sent on board the ship and took Pac-quas out in chains, commanding him, with the other Hong merchants, to follow him to the city, there to lay the whole affair before the Viceroy.

Saturday, Oct. 6th, 1821.

Here the manuscript which has been furnished us closes. Terranova remained in confinement on board the *Emily*; and the security merchant and linguist were kept in irons at Canton. The entire American trade was stopped, even to the supply of the *Emily* with provisions. In this state of things, another proposition was made by the Chinese, that Terranova should receive another trial in Canton, and that even though he should be found guilty, a respite of execution for thirty days should be allowed, to furnish opportunity for producing such evidence, as would cause the trial to be set aside. In the state of duress in which he was placed, and not warranted in insisting that the trial should be on board his ship, Captain Cowpland made no resistance, (none would have been of any avail,) and on the 25th of October, Terranova was brought by the Chinese from Whampoa to Canton. What form of trial, or whether any was had, was never known to the Americans. He was strangled, and in three or four days his body was sent back to the *Emily* for burial.

We have very little to add to this unvarnished and painful account. Notwithstanding the efforts very properly made by the Americans as counsel for Terranova, to prove Terranova wholly unconcerned in the death of *Ko-leang-she*, we understand from the best authority, that though he was probably innocent of the crime of murder, he was as probably the cause of the woman's death. The conduct of the *Pon-ue* was harsh, tyrannical, and cruel; but it may no doubt be justly said in apology for him, that a course of conduct essentially different, would probably have cost him his life. For the unwarrantable insinuations of the *Quarterly Review*, that there was a really guilty person, an American, and that a poor foreigner was given up in his stead, our readers see there is not the slightest foundation.

In establishing this fact we have accomplished our object. It is no part of our design to discuss either the character of this transaction, or the general line of conduct, which ought to be pursued in such a case. It is easy for gentlemen reposing in their easy chairs at home, to say what ought to be done in difficult conjunctures abroad. Had Captain Cowpland attempted at the last to prevent Terranova from being taken from his ship, to say nothing of other consequences, his security merchant would have been hung: hung, because Captain Cowpland persisted in opposing the law of the land. Would this have mended the matter? But whatever may be thought of this, the insinuation in the *Quarterly Review* is, we trust, sufficiently disproved.

ART. IV. — *Life of Black Hawk.*

The Life of Mal-ka-tai-me-she-kia-kia or Black Hawk, dictated by Himself. pp. 155. Boston, 1834.

THIS book is a curiosity; an anomaly in literature. It is the only autobiography of an Indian extant, for we do not consider Mr. Apes and a few other persons of unmixed Indian blood, who have written books, to be Indians. They were indeed born of aboriginal parents, but their tastes, feelings and train of ideas, were derived from the whites, and they were and are, in all essential particulars, civilized men. Human